IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1551 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANCHALBEN WD/O.MANGUBHAI L PATEL

Versus

MUNICIPAL COMMISSIONER

Appearance:

MR TS NANAVATI for Petitioner

MR RAJESH DESAI for MR PRASHANT DESAI for Respondent No.1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner who is widow of Mangubhai L. Patel and belonging to Dodia Patel whose husband has died on December 5, 1987 while serving as a Clerk with the respondent Corporation who has not been paid the retirement benefits like permanent family

pension, gratuity, etc., by the Corporation has prayed that the respondent be directed to fix permanent pension instead of provisional pension and to pay pension to the petitioner from June 7, 1987 till the payment is made with interest at the rate of 15% forthwith and the respondent be further directed to continue to pay the amount of family pension to the petitioner every month and also to pay the gratuity after fixing the revised rate of pay scale of the deceased as per revised pay from January 1, 1986.

2. While issuing rule on the petition this Court granted interim relief by directing the respondent Municipal Corporation to finalise the pension case of the petitioner latest before May 20, 1990. On May 23, 1990 when the matter was placed for further hearing, this Court (Coram: A.P. Ravani, J.) has passed the following order:

"On May 21, 1990 when the matter came up for hearing it was disclosed to the Court that no decision was taken by the Municipal Commissioner as per the directions given by this Court on April 5, 1990. Hence it was directed on May 21, 1990 that the respondent - Municipal Commissioner should personally remain present in the Court on 23.5.1990. Yesterday, i.e., on 22.5.90 learned counsel Mr. Pandya on behalf of the respondent Municipal Commissioner, appeared before me and stated that the decision was taken by the Municipal Commissioner for the grant of pension and other terminal benefits payable to the petitioner. In that view of the matter and in view of the facts and circumstances stated in the affidavit-in-reply, compliance with the directions given to the Municipal Commissioner to remain personally present in the Court is dispensed with. The affidavit in reply is ordered to bee taken in record.

It is disclosed in the affidavit-in-reply that two cheques as per the details given hereinbelow have been handed over to the petitioners:

1. Cheque No.352803 dated 21.5.1990 for Rs.52,545.60 drawn on State Bank of India.
2. Cheque No.352802 dated 21.5.90 for Rs.3,188.13 drawn on State Bank of India.

The aforesaid statement is not disputed by the learned counsel for the petitioner. Having regard to the special facts and circumstances of the case and particularly in view of the fact that the petitioner is a widow and is required to upbring three minor children who are aged 12, 10, and 7 years, it is directed that the amount of Rs.52,545.60 of cheque No.352803 shall be invested in fixed deposit receipt for a period of 7 years in the joint name of the petitioner and of the three minor children. The amount shall be invested in such a way that the interest amount shall be payable quarter-yearly to the depositors. This direction shall be carried out jointly by the petitioner and resp. Municipal Commissioner. The amount of another cheque No. 352802 of Rs.3,188.13 is permitted to be retained by the petitioner. S.O. to June 20, 1990."

3. Today when the matter was placed for final hearing, Mr. T.S. Nanavati, learned advocate for the petitioner and Mr. Rajesh Desai, learned advocate for the respondent jointly made a statement that pursuant to the aforesaid two orders, the main grievance of the petitioner has been now redressed and, therefore, now there is nothing due to the petitioner from the respondent. Mr. Desai, learned counsel for the respondent Corporation places on record communication addressed to Mr. P.G. Desai, learned advocate for the respondent Corporation by the Deputy Commissioner (Health & Hospital), Surat Municipal Corporation, wherein it is categorically mentioned about the retirement benefits paid to the petitioner in detail. The same is ordered to be retained on record.

4. The learned counsel for the petitioner states that in view of the aforesaid two orders recorded by this Court and more particularly the communication referred to hereinabove there is nothing due and payable to the petitioner by the respondent. But since he has no communication from he petitioner this petition may be disposed of reserving liberty to revive in case of difficulty.

5. In view of the aforesaid state of affairs, grievance voiced in the petition is practically redressed since the petitioner has been paid all the retirement benefits, such as pension, gratuity, etc. Therefore, this petition is required to be disposed of reserving liberty to revive the petition in case of difficulty.

6. For the foregoing reasons, the petition is disposed of with liberty to revive the petition in case of difficulty. Rule is discharged with no order as to costs. Interim relief stands vacated.

12.1.2001. (A.M. Kapadia, J.)
(karan)